



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 13, 2004

Mr. John C. Ginn  
Smith, McDowell, Ginn & McDowell  
P.O. Box 493  
Sulphur Springs, Texas 75483

OR2004-5760

Dear Mr. Ginn:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205030.

Lake Country CASA ("CASA") received a request for a specified statistical report; several categories of information related to CASA volunteers, board members, staff, and advisory board members; various information related to children served by CASA; communications with judges; minutes of all meetings; and all newsletters. You state that "CASA does not maintain any records which pertain to social economic information" and that CASA does not produce a newsletter. We note that the Public Information Act (the "Act") does not require a governmental body to disclose information that did not exist at the time the request was received. *Econ. Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex.Civ.App.—San Antonio 1978, writ diss'd); Open Records Decision No. 452 at 3 (1986). You also state that CASA has released most of the responsive information but claim that portions of the submitted information are excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

You assert that some of the submitted information is excepted from release under section 552.101 of the Government Code. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision" and encompasses information made confidential by constitutional law or judicial decision. In the opinion *In re Bay Area Citizens Against Lawsuit Abuse*, 982 S.W.2d 371 (Tex. 1998), the Texas Supreme Court determined that the First Amendment right to freedom of association could protect an

advocacy organization's list of contributors from compelled disclosure through a discovery request in pending litigation. In reaching this conclusion, the court stated:

Freedom of association for the purpose of advancing ideas and airing grievances is a fundamental liberty guaranteed by the First Amendment. *NAACP v. Alabama*, 357 U.S. 449, 460, 78 S.Ct. 1163, 2 L.Ed.2d 1488 (1958). Compelled disclosure of the identities of an organization's members or contributors may have a chilling effect on the organization's contributors as well as on the organization's own activity. See *Buckley v. Valeo*, 424 U.S. 1, 66-68, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976). For this reason, the First Amendment requires that a compelling state interest be shown before a court may order disclosure of membership in an organization engaged in the advocacy of particular beliefs. *Tilton*, 869 S.W.2d at 956 (citing *NAACP*, 357 U.S. at 462-63, 78 S.Ct. 1163). "[I]t is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters, and state action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." *Id.*

*Bay Area Citizens*, 982 S.W.2d at 375-76 (footnote omitted). The court held that the party resisting disclosure bears the initial burden of making a *prima facie* showing that disclosure will burden First Amendment rights but noted that "the burden must be light." *Id.* at 376. Quoting the United State Supreme Court's decision in *Buckley v. Valeo*, 424 U.S. 1, 74 (1976), the Texas court determined that the party resisting disclosure must show "a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties." *Id.* Such proof may include "specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself." *Id.*

You seek to withhold information pertaining to CASA's volunteers, board members, staff, and advisory board members under section 552.101 in conjunction with the constitutional right of association. Having considered your arguments and all of the submitted information, we find that the disclosure of the identities of CASA's contributors will burden First Amendment rights of freedom of association. We believe the term "contributor" encompasses both the identities of those individuals and corporations who make financial donations to CASA and volunteers who donate their time and services to CASA. However, we note that the term "contributor" does not encompass members of CASA's governing board or staff. See generally Gov't Code § 552.022(a)(2). In addition, *Bay Area Citizens* does not make confidential information pertaining to the donations themselves, such as the amount donated or types of donations. See *Bay Area Citizens*, 982 S.W.2d at 376-77 (only the names of contributors were at issue). Therefore, you must withhold the information that identifies contributors, including volunteers serving on the advisory board, under section 552.101 pursuant to the right of association, unless the contributors have waived their right

of association. We emphasize that the information must be withheld under section 552.101 only to the extent reasonable and necessary to protect the identity of the contributor. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Amy Peterson", with a stylized flourish at the end.

Amy D. Peterson  
Assistant Attorney General  
Open Records Division

ADP/sdk

Ref: ID# 205030

Enc. Submitted documents

c: Mr. Gary W. Gates, Jr.  
2205 Avenue I #117  
Rosenberg, Texas 77471  
(w/o enclosures)